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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re D.F., JR., A Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

D.F., SR.,

Defendant and Appellant.

A142537

(Alameda County
Super. Ct. No. OJ13021738)

In this dependency proceeding, D.F., Sr. (Father) appeals a dispositional order under Welfare and Institutions Code¹ section 361, subdivision (c)(1) removing his son, five-year-old D.F., Jr. (D.F.), from his physical custody. While the appeal was pending, the trial court entered an order terminating jurisdiction and dismissing the dependency proceedings after a successful mediation in which Father agreed to an arrangement giving custody of D.F. to T.C. (Mother), with Father having visitation rights. We conclude there is no longer a justiciable controversy and dismiss the appeal.

¹ Statutory references, unless otherwise indicated, are to the Welfare and Institutions Code.

I. BACKGROUND

A. The Injuries Suffered By J.S.

D.F. was born in January 2009 to Mother and Father. The couple was unwed at the time of D.F.'s birth and never married. After living together with Mother and D.F. in Sacramento until 2011, Father moved to San Francisco, leaving D.F. in the custody of Mother. When Mother moved to Atlanta to attend school, Father and Mother contested custody of D.F. Father was awarded custody by a family court in July 2013.

In October 2013, Father lived in an apartment in Oakland with D.F. Father's girlfriend, D.G. (Ms. G.), would occasionally sleep over at the apartment, along with her three-year old son, J.S. On the evening of October 9, 2013, while Father was at work, Ms. G. was at Father's apartment with J.S. and D.F. At around 11p.m., she drove to pick Father up from his place of work, with both boys asleep in the car. Ms. G. and J.S. stayed over that night at Father's apartment.

The following morning, Father and Ms. G. and the boys set out together by car, with Ms. G. first dropping Father and D.F. at a BART station, and then dropping off J.S. at a daycare center, before she continued on to her place employment for the day. J.S. was still asleep when they left, was carried to the car by Ms. G., and slept in the car on the way to daycare. After being dropped off at BART that morning, Father continued on, accompanying D.F. to preschool and then proceeding to a CalWorks appointment for the remainder of the morning.

Father's version of events during the afternoon of October 10 was as follows. At around 1:30 p.m., Father picked D.F. up from his preschool and then called Ms. G., offering to pick up J.S. from daycare. At about 2:30 p.m. on October 10, Father went to J.S.'s daycare center to pick him up. Upon picking J.S. up, Father claimed the boy seemed "flimsy, stumbling and walking weird," but Father had the impression his wooziness was because he was just tired and sleepy. J.S. slept in the car on the 10-minute drive back to Father's apartment, and Father carried him inside and laid him on a bed so that he could continue to nap.

Over the next 70 minutes, until the appointed time at 4 p.m. for Father to pick up Ms. G. at a BART station, J.S. slept, D.F. played with his toys, and Father played with a video game. While J.S. was sleeping, Father noticed that he was shaking and biting his tongue. He thought J.S. might be having a seizure and he called Ms. G. to report J.S.'s condition to her. She and Father agreed that J.S. should be taken to Children's Hospital (Childrens). Ms. G. instructed Father to gather up J.S.'s "medical papers" and bring him along to pick her up at the BART Station around 4 p.m. so they could proceed directly to Childrens. Father tried to wake J.S. before leaving, but he was unresponsive, so Father carried him to the car.

When interviewed by a social worker at Childrens as to the cause of J.S.'s injuries, Ms. G. suggested that J.S. had been injured during the evening of October 9 while in her care at Father's apartment. She stated that "her son had fallen from a couch . . . , hitting his chin on a tile floor, and flipped over on his legs. She further reported that [J.S.] had had a tantrum . . . , and that she had picked him up by his ear." Another case worker expressed skepticism about the suggestion of an accident on the evening of October 9, since there was no couch in Father's apartment and the floor there was mostly carpeted. Father gave no statement at Childrens. Despite being told by hospital staff "not to leave [the hospital] as a social worker would be speaking with" him, Father left before he could be interviewed.

Upon examination of J.S. by doctors at Childrens, it turned out that J.S. had suffered life-threatening injuries, the nature of which ruled out accident as the likely cause. He "had trauma to his chin and ear, a severe subdural hematoma, fractured skull, rupturing in both eyes and he required intubation." "There was concern that [he] would not survive the weekend." A skeletal examination, done a few weeks after his admission to Childrens, showed that J.S. also had a broken tibia. Although the date that his tibia fracture occurred was unclear, medical staff estimated that it appeared to date from around the time of the other injuries.

Based on computer imaging of J.S.'s head injuries, Dr. Jim Crawford of the Center for Child Protection at Childrens opined that "[J.S.] has a very significant skull fracture

on the right side of his head,” which he described as a “ ‘comminuted skull fracture,’ ” meaning that “it splits and fractures into many different directions, much like a lightning bolt.” He further opined that “the point of the trauma is most likely where the fracture radiates from. In the case of [J.S.],” Dr. Crawford said, “ the point of origin is on the right side behind the ear but higher on the head.” Given the nature of the injury, Dr. Crawford expressed the view that “there was at least one massive blow to the skull, but there could have been more.”

B. The Initiation of Dependency Proceedings, the Detention of D.F., and the Removal Order

On October 11, 2013, the day after J.S.’s hospitalization, the Oakland Police took D.F. into protective custody. During the eight months leading to disposition, while the Alameda County Social Services Agency (the Agency) and the Oakland Police Department (OPD) investigated the circumstances of J.S.’s injury, D.F. was placed in out-of-home care, first in a foster home, then with a relative. He at first showed signs of emotional trauma due to the separation from Father, but his behavior eventually improved after he began receiving therapy. During this period Father visited his son regularly, under supervised circumstances, and his interactions with D.F. were appropriate and positive.

The Alameda County Social Services Agency (the Agency) filed a dependency petition on October 15, 2013, alleging pursuant to section 300, subdivision (a) that D.F. was at risk of serious injury because J.S. had suffered severe injuries while in the care of Father, and D.F. was “subject to the same parenting that resulted in the injuries caused to [J.S.].” In the months that followed, the Agency amended the petition, adding, inter alia, additional allegations of failure or inability to supervise or protect D.F. under section 300, subdivision (b), and alleging that Mother “currently lives in Atlanta, GA and states that she is unable at this time to have custody” of D.F.

The juvenile court held a combined jurisdiction/disposition hearing on June 6, 2014 (the June 6 hearing). Prior to the hearing, the Agency filed a Detention Report dated October 16, 2013, a Jurisdiction Report dated October 30, 2013, a Jurisdiction-

Disposition Report dated February 26, 2014, and two Addendum Reports, one dated April 10, 2014 and one dated June 6, 2014, all of which were admitted into evidence at the June 6 hearing. Father made no objection to any of these reports or to any of their attachments, including medical reports documenting J.S.'s injuries and the findings of his attending physicians at Childrens. Although Father and Mother both contested jurisdiction and each, respectively, sought custody of D.F. at disposition, only Father appeared at the hearing. Mother failed to visit D.F. during his detention and failed to appear at the hearing, but prior to the hearing did tell a social worker for the Agency that "she was still in Atlanta and could not have custody of [D.F.] at this time."

The June 6 hearing focused primarily on what caused J.S.'s injuries. In statements given to case workers and an OPD investigator in the days and weeks after J.S. was hospitalized, Father could not explain what happened to J.S. The circumstantial evidence gathered by investigators, however, focused suspicion exclusively on him. Among the most pertinent circumstances were these: (1) according to the medical staff at Childrens, had J.S. suffered a skull fracture while at daycare or during the evening of October 9, he would have been in extreme pain, mostly likely crying or screaming, and might well have lost consciousness; (2) J.S. showed no pain or distress either the evening of October 9 or the following day while at daycare, prior to arriving back at Father's apartment; and (3) following his detention, D.F.'s foster mother reported that (a) D.F. told her that Father "hits me on the head all the time," and (b) when in foster care, D.F. would occasionally cower and cover his head with his hands in fear of being struck.

With the circumstantial evidence pointing to the cause of J.S.'s injuries as a beating by him, Father took the stand at the June 6 hearing as the sole witness. He denied hitting J.S. but still had no explanation for how J.S. was injured. He admitted to occasionally using an open hand to strike D.F., testified that he is an attentive parent and can protect his son, and described his efforts to secure custody in family court proceedings. He also testified to visiting D.F. consistently after he was detained, and said that he had begun participating in counseling and therapy with his son. For his part, according to the Agency's reports, D.F. showed strong emotional attachment to his

Father and made unprompted statements to his foster parents to the effect of “Daddy didn’t do it” and “I don’t want Daddy to get in trouble” when the subject of J.S. or his injuries came up, although he also said things suggesting that he likely witnessed the incident in which J.S. was injured but would not share the details, apparently because he had been coached.

In its documentary summary of the findings of its investigation, the Agency concluded that “Without any explanation as to how [J.S.] was severely injured while in [Father’s] care [D.F.] remains at substantial risk of befalling a similar fate. As inferred from the medical evidence and events reported above, [J.S.] was injured sometime after [Father] picked him up from daycare. As [Father] cannot or will not offer an explanation, the Agency can only assume that [J.S.] was injured by [Father] directly or indirectly due to the lack of supervision. Either way, [D.F.] is in need of protection and out of home placement until [Father] learns to control his anger appropriately and/or learns how to appropriately supervise and parent children.” Based on these findings, the Agency took the position that “[D.F.]’s out of home placement continues to be appropriate and necessary to meet his needs. . . . [D.F.] is well cared for and comfortable in his placement and his [current caregiver at the time of disposition] is committed to his immediate and long term needs, should that be necessary.”

On June 19, 2014, the juvenile court sustained the Agency’s amended dependency petition, took jurisdiction over D.F., entered an order removing D.F. from the physical custody of both Father and Mother, and directed that reunification services be provided to Father. The removal order effectively continued the out-of-home placement status of D.F. that had been in effect since he was detained in October 2013. While observing that Father had made a good start at doing some of the things he needed to do to achieve reunification, the court concluded, inter alia, that (1) returning D.F. to the custody of either Father or Mother would present a substantial danger to his physical health, safety, and protection and that, (2) to protect him, there was no reasonable alternative to removal.

Father timely appealed the June 19, 2014 order. During the pendency of the appeal, counsel for the Agency wrote to this Court advising us that on January 7, 2016 the juvenile court dismissed jurisdiction over D.F. and “ordered that Father and Mother share legal custody of D.F. with Mother retaining physical custody and primary residence” pursuant to a mediation agreement. Citing the recent decision in *In re N.S.* (2016) 245 Cal.App.4th 53 (*N.S.*), as well as *In re Michelle M.* (1992) 8 Cal.App.4th 326 (*Michelle M.*), counsel contends that, because this Court cannot grant [Father] any effective relief,” the appeal should be dismissed.

II. THIS APPEAL MUST BE DISMISSED

In *N.S.*, *supra*, 245 Cal.App.4th 53, Division One of this court recently dismissed an appeal from a jurisdiction/disposition order in a section 300 proceeding after counsel for the dependent child’s mother advised the court by letter of the dismissal of the dependency proceedings while the appeal was pending. Before turning to the issue of mootness, the court in *N.S.* pointed out that “dependency counsel have a duty to bring to the appellate court’s attention post-appellate rulings by the juvenile court that affect whether the appellate court can or should proceed to the merits.” (*Id.* at p. 57.) Such rulings should only be forwarded, the court instructed, “when they affect the appellate court’s ability to grant effective relief or may play a proper role in the consideration of the appeal’s merits.” (*Id.* at p. 58.) The court noted that, before providing such notice, counsel should first “evaluate the practical effect of a subsequent ruling to determine whether this standard is satisfied,” and forward the post-appeal ruling only once they are satisfied the standard is met. (*Ibid.*) We appreciate Agency counsel’s attention to this obligation in this case.

N.S. was an appeal from a combined dependency jurisdictional/disposition order, as is this case. The parents of the child there, *N.S.*, were arrested for growing marijuana in their home when *N.S.* was still in utero. Following *N.S.*’s birth, when she was two weeks old, her parents were again arrested for growing marijuana in their home, and a

dependency petition was filed, alleging inter alia that N.S. was facing a substantial risk of harm under section 300, subdivision (b) because the family was “ ‘living in a marijuana grow house,’ where the infant was exposed to dangerous chemicals and a fire hazard from illegal wiring.” (*N.S.*, *supra*, 245 Cal.App.4th at p. 56.) N.S. was ordered detained and placed in out-of-home custody with a relative. (*Ibid.*)

During the course of the dependency proceedings, N.S.’s mother visited the child regularly and demonstrated she not only wished to achieve the return of custody, but she made demonstrable progress toward that goal. (*N.S.*, *supra*, 245 Cal.App.4th at p. 56.) Nonetheless, at the combined jurisdiction/disposition hearing, the court sustained the dependency petition, finding that there was still a “current risk of harm to N.S. based on Mother’s past behavior.” (*Id.* at pp. 56–57.) The court adjudged N.S. a dependent of the court, placed N.S. back in Mother’s care, and ordered the Agency to provide family-maintenance services. The mother appealed, but during the pendency of the appeal, she appears to have shown sufficient continued progress that the juvenile court awarded her custody of N.S. and dismissed the dependency proceedings. (*Id.* at p. 57.) The appellate panel therefore dismissed the mother’s appeal as moot, relying on *Michelle M.*, *supra*, 8 Cal.App.4th 326, the other case cited by the Agency in support of its request for dismissal of this appeal. (*Id.* at pp. 60, 63.)

Procedurally, this case appears to be quite similar to *N.S.* Here, the juvenile court sustained section 300 jurisdictional allegations based on Father’s past conduct, and, despite some degree of progress by Father toward demonstrating parental fitness, entered a dispositional order based on findings of continuing current risk to D.F.’s safety, and directed that reunification services be provided. Ultimately, after receiving reunification services, both Father and Mother appear to have made enough progress toward showing their fitness to parent D.F. to justify dismissal of the dependency proceedings. We agree with the *N..S.* court that, under these circumstances, the issue of mootness arises and the focus of the mootness inquiry is on whether there remains any possibility of effective

relief. We see none here. While we have discretion to proceed to the merits of an appeal that has been mooted based on events occurring subsequent to the filing of the appeal in some circumstances, we see no basis to do so in this case.

The *N.S.* court explained that speculative concerns about future detriment are insufficient to show there is a continuing, live controversy. The court acknowledged the understandable “desire of parents to challenge negative findings made about their parenting in dependency proceedings even when they are ultimately able to regain custody of their children,” but it was unconvinced “that any ruling we could issue here would have any practical effect on future dependency proceedings. Mother acknowledges, and we agree, that substantial evidence supports the allegations of the dependency petition in that the evidence showed that Mother and *N.S.*’s father were arrested twice in connections with activity at a home that was a marijuana-grow house and where unsafe chemicals and wiring were found. Those facts would almost certainly be available in any future dependency proceedings, as would the facts that mother moved out of the grow house, took prompt and positive steps to reunite with *N.S.* and quickly regained custody of her child. Because mother has not shown any adverse effect from the jurisdictional findings, we decline to exercise our discretion to review them.” (*N.S.*, *supra*, 245 Cal.App.4th at pp. 62–63.)

The same analysis applies here except with even greater force, since Father limits his appeal to the dispositional order in this case. Father does not appeal from the jurisdictional findings and takes issue only with the custody order, which continued the placement of D.F. with a family member, outside of Father’s physical custody, during the pendency of the dependency proceedings. Not only was the ultimate disposition of the case in Father’s favor—the proceedings having been dismissed—but upon dismissal Father consented to a custody arrangement by which Mother was given physical custody, and he now has visitation rights by agreement of the parties. Thus, Father is no longer contesting the issue of custody, and is no longer an aggrieved party. Accordingly, not only is the appeal moot at this point, but Father no longer has standing to appeal as a “party aggrieved.” (Code Civ. Proc., § 902.)

III. DISPOSITION

This appeal is dismissed.

Streeter, J.

We concur:

Ruvolo, P.J.

Rivera, J.

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